

CONFIDENTIAL

OGC Has Reviewed

OLC 74-2401  
18 November 1974

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT : CIA Access to Educational Records of Students

1. The Elementary and Secondary Education Act of 1965 was recently amended (P. L. 93-380). Section 438 of the law, which was a floor amendment by Senator James L. Buckley (D., N. Y.) to the original bill, withholds all Federal funds from any educational institution at any level which allows any person or agency access to school records without the express written permission of the student or his parents. The law

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Normal Personnel and Security processing is not affected since appropriate waiver forms are secured from the subjects. The forms are now being revised for greater specificity. The law goes into effect Tuesday, November 19th, 1974.

2. Certainly, this is an area where this Agency could not and should not seek a specific exemption. There have been strong repercussions from educational institutions since the law allows students access to all of their records, and Senator Buckley announced he is preparing amendments to the law. OLC will determine the scope of the amendments being considered and explore the possibility of coming under a general exemption to allow certain access without express permission. The chances, however, do not appear good since the policy to require written consent appears firm. Further, to date CIA is the only agency to express concern to the Office of Management and Budget.

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SIGNED

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P. L. 93-380 pp. 88-91

"PROTECTION OF THE RIGHTS AND PRIVACY OF PARENTS AND STUDENTS

"Sec. 438. (a) (1) No funds shall be made available under any applicable program to any State or local educational agency, any institution of higher education, any community college, any school, agency

offering a preschool program, or any other educational institution which has a policy of denying, or which effectively prevents, the parents of students attending any school of such agency, or attending such institution of higher education, community college, school, preschool, or other educational institution, the right to inspect and review any and all official records, files, and data directly related to their children, including all material that is incorporated into each student's cumulative record folder, and intended for school use or to be available to parties outside the school or school system, and specifically including, but not necessarily limited to, identifying data, academic work completed, level of achievement (grades, standardized achievement test scores), attendance data, scores on standardized intelligence, aptitude, and psychological tests, interest inventory results, health data, family background information, teacher or counselor ratings and observations, and verified reports of serious or recurrent behavior patterns. Where such records or data include information on more than one student, the parents of any student shall be entitled to receive, or be informed of, that part of such record or data as pertains to their child. Each recipient shall establish appropriate procedures for the granting of a request by parents for access to their child's school records within a reasonable period of time, but in no case more than forty-five days after the request has been made.

"(2) Parents shall have an opportunity for a hearing to challenge the content of their child's school records, to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein.

"(b) (1) No funds shall be made available under any applicable program to any State or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution which has a policy of permitting the release of personally identifiable records or files (or personal information contained therein) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

"(A) other school officials, including teachers within the educational institution or local educational agency who have legitimate educational interests;

"(B) officials of other schools or school systems in which the student intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

"(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, (iii) an administrative head of an education agency (as defined in section 409 of this Act), or (iv) State educational authorities, under the conditions set forth in paragraph (3) of this subsection; and

"(D) in connection with a student's application for, or receipt of, financial aid.

"(2) No funds shall be made available under any applicable program to any State or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution which has a policy or practice of furnishing, in any form, any personally identifiable information contained in personal school records, to any persons other than those listed in subsection (b) (1) unless—

P. L. 93-380 (continued)

“(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents. or

“(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

“(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, (C) an administrative head of an education agency or (D) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education program, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided*, That, except when collection of personally identifiable data is specifically authorized by Federal law, any data collected by such officials with respect to individual students shall not include information (including social security numbers) which would permit the personal identification of such students or their parents after the data so obtained has been collected.

“(4) (A) With respect to subsections (c) (1) and (c) (2) and (c) (3), all persons, agencies, or organizations desiring access to the records of a student shall be required to sign a written form which shall be kept permanently with the file of the student, but only for inspection by the parents or student, indicating specifically the legitimate educational or other interest that each person, agency, or organization has in seeking this information. Such form shall be available to parents and to the school official responsible for record maintenance as a means of auditing the operation of the system.

“(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student.

“(c) The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

“(d) For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

“(e) No funds shall be made available under any applicable program unless the recipient of such funds informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

“(f) The Secretary, or an administrative head of an education agency, shall take appropriate actions to enforce provisions of this section and to deal with violations of this section, according to the provisions of this Act, except that action to terminate assistance may

be taken only if the Secretary finds there has been a failure to comply with the provisions of this section, and he has determined that compliance cannot be secured by voluntary means.

“(g) The Secretary shall establish or designate an office and review board within the Department of Health, Education, and Welfare for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of this section and complaints which may be filed concerning alleged violations of this section, according to the procedures contained in sections 434 and 437 of this Act.”

(b)(1)(i) The provisions of this section shall become effective ninety days after the date of enactment of section 438 of the General Education Provisions Act.

(2)(i) This section may be cited as the “Family Educational Rights and Privacy Act of 1974”.